

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

MICHAEL L. PROVINCE,

Petitioner,

v.

CIVIL ACTION NO. 1:05-0868

WARDEN THOMAS L. MCBRIDE,

Respondent

MEMORANDUM OPINION AND JUDGMENT ORDER

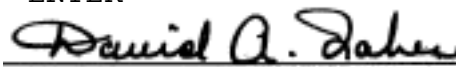
By Standing Order entered on July 21, 2004, and filed in this case on October 31, 2005, this matter was referred to United States Magistrate Judge R. Clarke VanDervort. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Standing Order directs Magistrate Judge VanDervort to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge VanDervort submitted his Proposed Findings and Recommendation on May 31, 2005, and proposed that this court (1) confirm and accept the Magistrate Judge's findings as contained therein, (2) deny petitioner's "Motion to Hold Federal Habeas Corpus Petition in Abeyance Pending Exhaustion of State Court Remedies" (Doc. No. 10); (3) deny petitioner's Application to Proceed *in Forma Pauperis* (Doc. No. 2); (4) grant respondent's motion to dismiss (Doc. No. 8); (5) dismiss this case without prejudice; and (6) direct the Clerk to remove this matter from the court's active docket. (See Doc. No. 15 at 10.)

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Proposed Findings and Recommendation. Neither party filed any objections to the magistrate judge's proposed findings. The failure of any party to file objections within the appropriate time frame constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985).

Having reviewed the Findings and Recommendation filed by Magistrate Judge VanDervort, the court (1) **CONFIRMS** and **ACCEPTS** the factual and legal analysis within the magistrate judge's Proposed Findings and Recommendation, (2) **DENIES** petitioner's "Motion to Hold Federal Habeas Corpus Petition in Abeyance Pending Exhaustion of State Court Remedies" (Doc. No. 10); (3) **DENIES** petitioner's Application to Proceed *in Forma Pauperis* (Doc. No. 2); (4) **GRANTS** respondent's motion to dismiss (Doc. No. 8); (5) **DISMISSES** this case without prejudice; and (6) **DIRECTS** the Clerk to remove this matter from the court's active docket and to forward a certified copy of this Memorandum Opinion and Judgment Order to all counsel of record and to the petitioner.

IT IS SO ORDERED this 19th day of June, 2006.

ENTER:



David A. Faber
Chief Judge